

REMARKS

This patent application presently includes claims 1 and 3-15, all of which stand rejected. The description is amended, and all rejections are respectfully traversed.

All subsisting claims stand rejected under 35 U.S.C. §112, first paragraph, on the ground that they contain "subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention. The claims were also rejected under the second paragraph of the same statute as "failing to set forth the subject matter which applicant (as) regard as their invention." The basis for both rejections is that the claims recite a "non-professional investor" yet, according to the examiner, the specification fails to provide an adequate written description of lenders being a nonprofessional investor. This rejection is respectfully traversed.

The application, as filed, contains sufficient disclosure to overcome both rejections. With the present amendment, the description is amended to incorporate the specific language set forth in the claims. Accordingly, this rejection should be withdrawn.

Initially, the undersigned wishes to point out that the finality of the present rejection is clearly improper, and that the applicant should be permitted to amend this application as a matter of right. Specifically, that language was already in the claims prior to the last amendment. If the examiner considered that language to be in violation of 35 U.S.C. §112, she should have made that rejection in the previous office action. At that time, the applicant would have had the opportunity to make the present amendment to the description as a matter of right. Making that rejection now, and making a final, cuts off the

applicant's rights which it could have had and should have. Cutting of the applicant's rights in this manner is not only a violation of the rules, the rises to the level of the violation of a constitutional right: taking a property right without due process. The present amendment must therefore be entered as a matter of right.

Basically, the examiner asserts that the original application does not disclose that the investor can be "non-professional." Technically, he is correct that the original application does not use that term (we edited when we revise the application). However, the original application includes the following paragraph (now at the top of page 7, originally just below the middle of page 6):

Limited Access: The current financial system allows only Banks and/or similar financial institutions to offer short or mid term financial loans, leaving aside individual investors (although part of this market is covered by low-yield short term bonds and Commercial Papers.) The essence of our model is to provide the means through which all investors can access this market, namely, our model is a Consumer to Business or Consumer to Consumer one (or in other words, Lenders to Borrowers).

This paragraph is currently amended to read as follows:

Limited Access: The current financial system allows only Banks and/or similar financial institutions to offer short or mid term financial loans, hereafter referred to as "professional investors", leaving aside individual investors (although part of this market is covered by low-yield short term bonds and Commercial Papers.) The essence of our model is to provide the means through which all investors can access this market, namely, our model is a Consumer to Business or Consumer to Consumer one (or in other

words, Lenders to Borrowers).

In other words, the description has been amended to coin the term "professional investor", thereby providing an antecedent basis for the term "non-professional investor" in the claims. There can be no doubt that the original disclosure considers that a defect in the existing financial system that it is limited to only professional investors. This paragraph makes it clear that a major feature of the invention is that it makes it possible for non-professional investors to be lenders. This is confirmed by the fact that it also reversed to the lender as a "consumer." Thus, there can be no question of the current amendment introducing new matter. It only introduces language to make the claims and description consistent.

Moreover, with such consistency in language, it is abundantly clear that both rejections under 35 U.S.C. §112 have been obviated. These rejections should be withdrawn.

Claims 1 and 3-5 were rejected under 35 U.S.C. §103 as obvious over Talbort et al. published U.S. patent application no. 2002/0116312 in view of Tengel et al. US Patent No. 5,940,812. This rejection is respectfully traversed. Neither reference, nor the combination, renders these claims obvious.

Initially, the undersigned wishes to object to the examiner's making this rejection final. This is a new ground of rejection on the newly cited reference. The examiner glibly states at the end of the office action that the applicant's amendments necessitated the new ground of rejection (thereby admitting that this is a new ground), but provides absolutely no further explanation. In fact, the only amendment made to the claims last time was the removal of a limitation. Accordingly, the examiner must have searched and cited references in the last office action which related to the limitations which now remain. It is not seen how the applicant's amendment could have possibly

necessitated new grounds of rejection or new reference. If the examiner can substantiate this, the undersigned insists on a detailed explanation. Otherwise, the finality of the rejection was improper and the applicant is now entitled to make the present amendments as a matter of right and to receive a further office action on the merits.

In making this rejection, the examiner admits that "Talbot does not explicitly disclose that the lender is a non-professional investor." However, she does not indicate where Talbot even provides such a suggestion. In fact, Talbot does not provide the slightest suggestion that a lender can be a non-professional investor. If the examiner disagrees, she is invited to indicate where in Talbot such a suggestion exists.

The rejection suggests that the examiner finds a suggestion in Tengel that an investor should be a non-professional. However, the only thing the examiner extracts from Tengel is that "lenders are, for example, entity in the business of originating loans." Is the examiner suggesting that an entity in the business of making loans is not a professional? No, this is a clear admission that Tengel does not teach or suggest that a lender should be in non-professional. Again, if the examiner disagrees, she is requested to indicate where in Tengel such a suggestion exists. In fact, she cannot, and this rejection must therefore fail.

Claims 1 and 3-5 should be allowed.

Claims 6-11 and 14 were rejected as obvious over Talbot in view of Tengel and further in view of Kocher US Patent Application Publication No. 2003/0061150. This rejection is respectfully traversed. None of these references nor any combination thereof renders the present claims obvious.

Again, the undersigned objects to the finality of a new ground of rejection based upon a newly cited reference, based

upon the reasons already stated. The present amendment must be permitted as a matter of right, and the applicant is entitled to a further action on the merits.

The examiner cites Kocher for the concept of "having performing electronic transaction including Dutch (split) or English (bulk or split) auction." The examiner does assert that Kocher even suggests that a lender should be a non-professional. Accordingly, the addition of this new reference does not overcome the defects of Talbort and Tengal as a basis for an obvious this rejection. Claim 1 therefore remains patentable over the combination of these three references. Claims 6-11 and 14 depend from claim one and are believed to be allowable based upon their dependence from an allowable claim.

Claim 12, 13 and 15 were rejected as obvious over Talbort in view of Tengal and Kaplan US Patent Application publication No. 2002/2095369. This rejection is respectfully traversed. None of these references or any combination thereof renders the present claims obvious.

Again, the undersigned objects to the finality of a new ground of rejection based upon a newly cited reference, based upon the reasons already stated. The present amendment must be permitted as a matter of right, and the applicant is entitled to a further action on the merits.

The examiner cites Kaplan for the concept of "having an electronic marketplace where barns are submitted for an auction in or PriceMatch." The examiner does assert that Kaplan even suggests that a lender should be a non-professional. Accordingly, the addition of this new reference does not overcome the defects of Talbort and Tengal as a basis for an obviousness rejection. Claim 1 therefore remains patentable over the combination of these four references. Claims 12, 13 and 15 depend from claim 1 are believed to be allowable based

upon their dependence from an allowable claim.

The examiner states that "applicant's arguments with respect to claims 1, 3-15 have been considered but are moot in view of the new ground(s) of rejection." In fact, those arguments are not moot, and they have apparently not been considered, at least not adequately. The claim language remains the same on the issues remaining the same, so the original arguments were clearly not moot. Neither are the present new arguments. It is time that these issues were considered and addressed specifically on the record.

As explained above, the applicant is entitled to have the present amendment entered as a matter of right, and such entry is respectfully requested. As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: September 27, 2005

Respectfully submitted,

By


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